Supreme Court, U.S.
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No. 04-1732

In The Supreme Court of the United States

PAULL ANDERSON,

Petitioner,

v.

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., AND WADE AND WADE, ATTORNEYS AT LAW,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of North Carolina

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the North Carolina Court of Appeals and the North Carolina Supreme Court were correct in the issuance of their orders dismissing the Appeal of the Petitioner as to the Order of the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, dated 12 December 2003 denying the enforcement in North Carolina of the Petitioner's Kentucky foreign judgment against the Respondents based upon the Petitioner's failure to comply with the relevant North Carolina mandated Rules of Appellate Procedure in perfecting the Appeal.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Julius Jennings Wade, Jr., James H. Wade and Wade and Wade, Attorneys at Law (herein unless otherwise referenced, Respondents Wade), hereby oppose the Petitioner's Petition for a Writ of Certiorari to review the Judgments and Orders of the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, 03-CVS-16356, the North Carolina Court of Appeals, No. COA P 05-51, and the Supreme Court of North Carolina, No. 315 PO 42, denying the enforcement in North Carolina of the Petitioner's proceeding to enforce the Petitioner's Kentucky foreign judgment against the Respondents.

OPINIONS BELOW

On 12 December 2003 the General Court of Justice, Mecklenburg County, North Carolina, in this case, 03-CVS-16356, after a civil trial on its merits as prescribed by the Uniform Enforcement of Foreign Judgment Act, Article 17, G.S. 1C-1701 *et seq.*, utilizing, as mandated by that Act, the North Carolina Rules of Civil Procedure, held that Paull Anderson (herein Petitioner) failed to comply with the mandatory requirements of the Act and in particular G.S. 1C-1703; that he did not meet his burden under G.S. 1C-1705; nor did he comply with the North Carolina Rules of Civil Procedure; that the judgment Petitioner sought to enforce was contrary to the public policy of the State of North Carolina, particularly Chapter 1D of the General Statutes and because the Judgment was in violation of North Carolina public policy, it was unenforceable pursuant to the provisions of G.S. 1C-1708.

Based upon the Court's said findings of fact and conclusions, the Presiding Judge, the Honorable Marvin K. Gray, entered the said Order dated 12 December 2003 adjudging that Petitioner's Motion to enforce the foreign judgment in North Carolina was denied and the Petitioner's objection and appeal were noted. App. 1.

A copy of the transcript of the 12 December 2003 trial numbers 48 pages although no copy is enclosed. No oral or deposition testimony was offered at that trial; however, an Affidavit of one of the Respondents, Julius Jennings Wade, Jr., dated 22 October 2003 was offered which capsules the events leading to the entry of the Kentucky judgment and references the Magistrate Judge's Report and Recommendation as to the trial held in Kentucky. This Affidavit is noted at App. 2.

The foreign judgment which the Petitioner seeks to enforce is dated 14 June 2000 in the amount of $611,200.53 as entered by the United States District Court, Eastern District of Kentucky, Pikeville Division, in case Number 94-111, $500,000.00 of which is punitive damages and the balance of $111,200.53 is compensatory damages plus interest from 14 June 2000.

This action to enforce the judgment was filed in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina in this case, Case Number 03-CVS-16356 on 23 September 2003 by the filing of the Affidavit and Motion of the Petitioner pursuant to G.S. 1C-1705(b).

This case is actually the third case filed by Petitioner in this Superior Court against these same parties seeking the same relief. The first case was filed 6 December 2000 as 00-CVS-18921 and Petitioner's Motion to enforce was

denied on 2 April 2003. On 3 April 2003 Petitioner filed a motion for relief pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure. On 1 May 2003 Petitioner filed Notice of Appeal to the North Carolina Court of Appeals and on 13 June 2003 Petitioner filed a second appeal from that Order. Petitioner then filed a second action against the same parties for the same relief on 27 March 2003 in 03-CVS-5490 and on 3 July 2002 this action was dismissed by the Court as abated. On 17 July 2003 Petitioner entered a Notice of Appeal in the second case and then on 22 September 2003 Petitioner withdrew his appeals from the Orders entered in the first two cases. Petitioner then filed on 23 September 2003 this case seeking to enforce the same judgment against the same parties as was at issue in the first two cases.

Following this filing, Petitioner on 16 August 2004 filed in the Mecklenburg County Superior Court Case Number 04-CVS-14623 pursuant to " . . . the applicable North Carolina General Statutes and . . . pursuant to 28 USC, Section 1913." The Petitioner did not seek any particular relief in that case but alleged the registration of this same judgment with the United States District Court, Western District of North Carolina, Charlotte Division.

Following this, the Petitioner filed on 22 February 2005 Civil Action Number 3: 05-CV-33 in the United States District Court, Western District of North Carolina, Charlotte Division, seeking a declaratory finding or judgment as to the validity and enforceability of this same Kentucky judgment and this filing follows the appellate history of this State case in the North Carolina courts, as follows: a) on 31 December 2003 Petitioner gave Notice of Appeal to the North Carolina Court of Appeals; b) Respondent Godley filed her Motion to Dismiss the Appeal on 28 May 2004

App. 3; c) Respondents Wade filed a similar motion on 4 June 2004 App. 4; d) on 11 June 2004 the North Carolina Court of Appeals entered an Order dismissing the Appeal, App. 5; e) Petitioner then gave Notice of Appeal to the North Carolina Supreme Court on 22 June 2004 pursuant to North Carolina Appellate Rule 14(b)(2), G.S. 7A-30 based upon an alleged violation or question arising under the State or Federal Constitution; f) on 1 July 2004 the Respondents Wade filed with the North Carolina Supreme Court a Response to that Notice, App. 6; g) Petitioner also filed a Petition for Discretionary Review to the North Carolina Supreme Court on 22 June 2004 pursuant to North Carolina Appellate Rule 15, G.S. 7A-31; h) the Respondents Wade filed on 1 July 2004 a Response, App. 7; i) on 3 July 2004 the Petitioner filed his Response with the North Carolina Supreme Court; j) on 19 July 2004 the Respondents Wade filed with the North Carolina Supreme Court their Response to this Response, App. 8; k) then, on 22 July 2004 Petitioner filed his Response to the preceding Response, App. 9; l) on 2 December 2004 the North Carolina Supreme Court entered an Order Dismissing Petitioner's Notice of Appeal, allowing these Respondents' Motions and denying Petitioner's Petition for Discretionary Review of the Order of the North Carolina Court of Appeals pursuant to G.S. 7A-31, App. 10; m) on 13 December 2004 the North Carolina Supreme Court advised that on the same date the same Order was entered as to Respondent Godley on 2 December 2004 App. 11; n) on 20 December 2004 the North Carolina Court of Appeals certified to the Clerk of Superior Court of Mecklenburg County that the North Carolina Supreme Court had allowed the Respondents' Motion to Dismiss and had denied the Petition for Discretionary Review, App. 12; o) then on 10 January 2005 the Petitioner filed his Writ of Certiorari to the North Carolina Court of

Appeals requesting that the Court issue its writ to the Superior Court to permit a review of the dismissed orders; p) on 20 January 2005 the Respondents Wade filed their Response to that Petition, App. 13; q) on 24 January 2005 Respondent Godley filed her Response to that Petition, App. 14; r) thereafter, on 27 January 2005 the North Carolina Court of Appeals issued its Order denying the Petitioner's Writ of Certiorari, App. 15; s) finally, on 6 April 2005 the North Carolina Supreme Court issued its Order denying Petitioner's Petition for Writ of Certiorari, thereby defeating the Petitioner's final appeal to the North Carolina State Court of last resort, App. 16 after the Respondents Wade filed their Response to that Petition on 23 February 2005 App. 17.

The aforesaid case filed by the Petitioner in the United States District Court, Western District of North Carolina, Charlotte Division, Number 3:05-CV-33 is now pending and the position of the Respondents Wade is that Petitioner, having elected to proceed under the North Carolina Uniform Enforcement of Judgment Act in this case, 03-CVS-16356, to seek enforcement of the Kentucky judgment having failed, that District Court case, a diversity of citizenship case seeking the identical relief against the same parties as in the State court case, should be dismissed under the law of the forum, North Carolina, and the dismissal should be given full faith and credit. Thus, the said District Court case should be dismissed under fundamental principles of *res judicata* and the Order as entered by the Honorable Marvin K. Gray denying the motion of the Petitioner to enforce in North Carolina the Kentucky judgment against these Respondents represents the final law of the case.